

DIRECT TAX CODE: THE METAMORPHOSIS

(With special reference to the Income Tax Statute)

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Abstract

Legislations governing Direct Tax are the imperative statutes. The subject, taxes governing Indian Economy needs overhauling and removal of deadwoods. The statute which has undoubtedly resulted always as the major source of Indian revenue is expected to undertake what may be called as the periodic spring-cleaning of the corpus of its statute law (Taxes comprises of more than 50% of aggregate revenue and the Direct Taxes contribute more than 1/5th to it). The law that got enacted more than five decades in past (i.e. in 1961) needs to get loaded with contemporary provisions, improvising and justifying its existence and functions as well. Hopefully, in next couple of years India may come-up with vital reformatory actions where Direct Taxation Laws and even Indirect Taxation Laws may get their new dimensions in the form of Direct Tax Code (DTC) and Goods & Service Tax (GST) respectively.

An initiative to bring the reform especially in direct taxation Statutes began half a decade earlier (Direct Tax Code 2009) but the merry-go-around temperament is still not making its enactment possible. Political scenario and proclamations, as initiated by the UPA regime, the Direct Taxes Code Bill 2010 sought to usher in a new income tax code for the country. Also, while presenting the maiden budget of the BJP-led NDA government, Finance Minister Arun Jaitley has given encouraging signals of reviving and bringing the revised Direct Taxes Code (DTC) soon.

KEY WORDS: Direct Tax Code (DTC), Goods & Service Tax (GST)

1. PHILOSOPHY OF LIFE

A Greek Philosopher's saying "there is nothing permanent except change" is somewhat an indicator of reformations too. And the saying has become inevitable to be exercised with human efforts to save lives on the earth. Besides scientific innovations done for improvising the living and to make it easy going, there is also a need to bring reforms in governance. Nature's Law and Statutes are mobilizing us. Victory on nature is not possible and utmost can be done is to combat with it. But to carry an obsolete statute, indicates sluggishness and no love to lives. Especially the statute which is mobilizing money in a nation needs a fast track reform without any deferment.

2. PROLOGUE: DTC

The Direct Taxes Code (DTC) is an endeavor by the Government of India, since half a decade, to overhaul, consolidate and to bring lucidity in the language and structure of direct tax laws in India into a single legislation. To replace the five-decade-old Income-tax Act, 1961, the major law and also an allied statute Wealth Tax Act 1957 the attempt has been initiated.

A draft DTC along with a discussion paper was first released on 12 August 2009, for public comments. Based on feedback from various stakeholders, the Government released a Revised Discussion Paper (RDP) on 15 June 2010 addressing 11 of the major identified issues. The Revised Discussion Paper was also available for public comments for a brief period up to 30 June 2010. Since then there have been recommendations from various stakeholders, as well as the Standing Committee on Finance (SCF) specifically formed for the purpose. But due to political unwillingness to endorse it has already prolonged its enactment. As a follow-up on this initiative and as stated by the Finance Minister, Mr. Arun Jaitley in his Interim Budget Speech in February 2014, after taking into account the recommendations of the Standing Committee on Finance, has released "revised" version of DTC 2013, the third version.

DTC proposes to overcome lacunae prevailing in present legislation and to stop tax evasion. Evading taxes would be tougher as the new code proposes to take away the powers from any tax authority to waive penalty. The government has tightened a provision in the revised DTC Bill that will make it tougher even for overseas companies to avoid paying taxes in India on transactions where underlying assets are located in the country.

There seem to be three key objectives behind the introduction of the DTC: *simplification* of language, resulting in lesser litigation; a law *promoting inclusive growth* and yet retains the incentives for businesses to make profits; and allow businesses to function in the free market economy but with *an accurate regulation*.

“It was only for the good of his subjects that he collected taxes from them, just as the Sun draws moisture from the Earth to give it back a thousand fold” words of Kalidas in Raghuvansh eulogizing King Dilip who in Hindu mythology is said to have been one of the most righteous and chivalrous emperors that the Saurya Dynasty, had ever produced. Indian Politics also need to become the same, righteous and chivalrous and to come joined-hand for expedite the enactment proceedings of the Code (Radhadiya, 2012).

3. REVIEW OF LITERATURE:

Pant K. and Arya A (2012): The article entitled ‘Assessee Perception towards Direct Tax Code’ the authors have tried to put light on the issues that a tax-payer will going to face after **Implementation of the Code**. According to them the new code has become inevitable to get uploaded and at the same time to repealed the old one. The existing statute is carrying numerous lacunae as a result somewhere it is adversely hitting the benefits of the tax-payers and on the other side providing unnecessary reliefs. Also the ambiguity regarding submission of details and the payment procedure which has made payment of income tax tough will also get removed with the introduction of the DTC. The Authors have contended in favor of the upcoming statute.

Singh P. (2014), in his article entitled ‘Direct Taxes Code Bill and Present Direct Taxes Law in India: a Comparative Analysis’ has done a **Comparative Analysis** among the provisions of the prevailing and the proposed statutes. In his analysis the author has made certain remarkable notes with his commentary as what the changes will result into. Besides literal changes remarkable the change in the *Residential Status* criterion will somewhere will adversely affect an individual and HUF, as the sub-category of a *Not-Ordinary Residence* is removed. Also, the scope to exercise Best Judgment Assessment is going to expand roughly. Now even on non-compliance of a return will make an assessing officer to exercise it. Provisions of Set-off of losses are proposed to get stringed. Minimum Alternate Tax (MAT), payable by companies will get charged at higher rate. In nutshell the author has highlighted and contended that though the change is must required but the change will make the statute somewhat more brutal.

Ernst & Young (2014): In its article entitled ‘India releases revised Direct Taxes Code 2013’ the Firm Researchers have made overall **International Taxation Law** coverage of the revised version of proposed law. Introduction of Branch Profit Tax (BPT), Presumptive Taxation Scheme (PTS) for NRIs, Provisions for distributing of Treaty Benefits, upgraded GAAR. On the other hand Transfer Pricing (TP) broadly similar to those contained in the prevailing Income Tax Law. As the observation noted in the article, the revised provisions in DTC 2013 in comparison with the provisions under DTC 2010 are largely either aligned with the International Taxation Law provisions or are a response to the recommendations of the Standing Committee on Finance (SCF).

4. OBJECTIVE:

The present research paper has been prepared with an objective to highlight the changes, proposed to be brought in direct tax laws, the phases the change is going on and its impact on person, nation and the economy. As it's a known fact that the Direct Tax Code is an attempt to consolidate, simplify and to establish an economically efficient, effective and equitable direct tax law but what changes have been brought to every new version of the Code, is the key objective of the paper. Outlining all the objectives of the present research as follows:

Main Objectives:

- a. To identify adverse factors in the prevailing statute (remarkable lacunae).
- b. To highlight remarkable provisions of the Proposed Code.

Ancillary Objectives:

- c. To draw commentary on the Comparative Study of the prevailing and proposed statutes.
- d. To identify remarkable remedies to lacunae, prevailing in the old statute.
- e. To make recommendations in order to bring out operational and financial efficiencies.

5. SCOPE OF THE STUDY:

Following are the brief details describing the coverage of the study:

As the study is connected with the Indian Revenue Laws therefore the Central Statutes, governing Indian Economy has been focused. Precisely the Direct Tax Laws has been taken as a focal point with special reference to Income Tax Laws. For the Study, the old law, The Income Tax Act 1961, amended upto the date has been considered. For

the comparative study the proposed code, Direct Tax Code, since 2009 and its contemporary version of the year 2013 has been taken.

6. DATA COLLECTION:

The making of any Indian Central Statute is a Parliamentary Proceeding and has nothing much to do with anyone's likings or disliking. To have a personal interaction with people and that to make out a comparison of one of the unfriendly laws would have been ridiculous and irresolute. Therefore the scope of having primary data is not much in such kind of study. Thus the study has based purely on uncontested literatures like the Act and the Code. Besides these research papers, discussions summaries of the prominent researchers in the field of taxation like Ernst & Young (E&Y), Price Water House Cooper (PWC), Delliotte have been considered.

The methodology opted for the study is ex-post facto and to have a comparative study it has been found that findings noted for happenings are convenient and most suitable if secondary data are opted. Also this kind of research is based on a scientific and analytical examination of dependent and independent variables (Saravanvel, 2007).

7. RESEARCH METHODOLOGY:

The purpose of research is to disclose new concepts to redefine existing concepts through the application of scientific procedures. The basic objective of Research is to find out the hidden truth, which has not been discovered as yet. It is actually a voyage of discovery (Kothari, 2008).

Young (1977) defines research as a scientific undertaking which, by means of logical and systematic techniques aims to:

1. Discover new facts or verify and test old facts,
2. Analyses their sequences, interrelationships and casual explanations,
3. Develop new scientific tools, concepts and theories, which would facilitate reliable and valid study of human behavior.

In the present research article, prevailing facts were taken as for initiating a comparative study and for the purpose, statutory literatures, regulations and related statutes were used besides going through some of research commentaries relating with the subject.

The purpose of the present article is to explore & highlight the lacunae prevailing in the present statute. Also to identify related provisions proposed under the new statute as the remedial provisions for all lacunae. For this a comparative study has been done, commentaries have been drawn and recommendations have been added to each.

As the nature of ex-post facto research methodology suggests that performances are taken in the way as they are and examined separately or wholly their impact on the explained variables. Also the inferences about relations among variables are made, without direct intervention. Therefore for this research article **Ex-post facto research methodology** has been adopted. Also for the comparative study of respective provisions a descriptive coverage has been opted, commentaries and recommendations have been drawn.

For drawing commentaries and making appropriate interpretation of statutes, statistical applications are least appropriate. Statistical tools would be applicable only when pecuniary outcomes or performances of the new statute & their provisions would get experienced.

Ex-post facto research methodology is systematic empirical inquiry in which the researcher does not have direct control of independent variables because their manifestation has already occurred or because they are inherently not manipulative. Inferences about relations among variables are made, without direct intervention, from concomitant variation of independent and dependent variables. This kind of research is based on a scientific and analytical examination of dependent and independent variables (Saravanavel, 2007).

8. PRESENT STATUTE AND REMARKABLE LACUNAE:

Taxes in India can broadly be classified into direct and indirect. Direct Tax includes Income tax and Wealth tax. The most significant of direct taxes is income tax. The levy of income tax is governed by the Income-Tax Act, 1961. The Act got enacted by the Parliament in the twelfth year of the republic of India as 43rd statute of 1961. However, its commencement was done w.e.f. the first day of July 1962.

Stupendous Size:

This is an extremely a perplexed legislation running into over 300 Sections with several subsections, XIV Schedules and having its enforcement all over India. Besides this certain allied laws are to be considered to make it complete like the Income Tax Rules 1962, Circulars & Clarifications issued by Central Board of Direct Taxes and Judicial Decisions.

Tedious Updating cum Fictitious Amendment Practice:

The statute is more than five decades old and since its birth; it has accommodated the recommendations and confusions of various law makers. It is said to be an obsolete law until get updated and amended periodically. The Act undergoes changes every year with additions and deletions brought out through a Finance Act passed by the Parliament. But then to overhauling of the Act has never been done. In other words amendment to a statute is said to be fictitious if every year it need to get loaded with new provisions. This has made it a law which is hard to read; perplex to understand and difficult to interpret. The court rulings, notifications, circulars have fuelled the jigsaw puzzle. The result is a galaxy of perpetual controversies. An attempt to plug one has invariably opened another Pandora's Box. While there is an honest attempt to rectify some of the anomalies in the law, these were only the tip of an ice-berg.

Inclusive Coverage: Lacks Four Corners Rule

Though, income has been classified exclusively as under, making its coverage exhaustive but still the definition carries an ambiguity. An inclusive definition of an 'Income' given under section 2(24) of the Act is simply getting carried by having a technical classification as *Heads of Incomes* namely, income from salary, income from house property, profits and gains of business or profession, capital gains and income from other sources, a residual head.

Residential Status vs. DTAA:

Incidence of tax on the income depends on *residential status* of an assessee. Under the Act, citizenship is considered to be a narrower term. This creates a possibility where a foreigner may get his income charged in India and a citizen of India not being liable to pay, depending upon their residential status. Besides this, Double Taxation Avoidance Agreement (DTAA) provisions are there consisting of couple of sections for proving double taxation relief to residents through credits under the Act and under the tax treaties. But having treaties with the rest of world and that to with each country is not possible. And thus compromising provisions are governing the Reliefs.

Tax Holidays & Deductions, need Regulatory Reforms:

To promote economic development, provisions supporting tax holidays and deductions are also being incorporated under the prevailing Act. Accordingly, the Act allows a tax benefits for undertakings engaged in infrastructural projects and development of industrial parks including Special Economic Zones (SEZs). Further there is concessional rate of taxation for income from exports and tax incentives for the establishment of industries in areas notified as backward or underdeveloped. Scenario where undertakings are availing tax exemptions/holidays could charge an excessive amount for sales and at the same time claiming higher tax holidays.

Sunset Clause vs. Perpetual Incentive

The clause in a statute providing that the Act or part of it will cease to have effect at some future time is known as a sunset clause. Popular provisions like Section 10A, Section 10B are few of them. At present many of the clauses have been ceased to exist as their utility came to an end. For such issues a permanent provisions to be made to encourage people. This can be done by proving them the benefit in minimal percentages perpetually rather having a high percentage benefits for a short span.

Non Compliance and Compatibility with Other Statutes:

What made Minimum Alternate Tax (MAT) Rate to get put into practice? Was not the rate decided for companies by the relevant Finance Acts do sufficed? How a Company was able to dodge over number of years even after making stringent amendments year by year? Why a statute loaded with number of provisions became helpless?

Selection of the Authority for Advance Rulings (AAR)

The Authority for Advance Rulings (AAR), constituted under the Act is authorized to determine any question of law or facts in relation to transactions which have been undertaken or are proposed to be undertaken by a non-resident. Lack of public confidence in the selection procedure for constituting the Authority, and limiting the field of choice for selection of members of the Authority (to the Indian Revenue Service Officers and Indian Judicial Service Officers) to be the main reasons for the Authority for Advance Rulings being no longer a preferred method of ensuring certainty in relation to the tax implications of cross-border transactions. The intent of strengthening the AAR by constituting additional benches and enlarging the scope of the Income Tax Settlement Commission to facilitate quick dispute resolution is also among the notable features of the new Code.

Multiple Rates of Taxation

Certain reservations and discriminations can be found in the present statute which may not be having any vital grounds of its implementation. In the present statute rates can be classified into two, rates given by the Relevant

Finance Acts and by the Act itself. Generally the Act specifies rates on some special incomes (like certain Short Term Capital Gains u/s 111A, Long Term Capital Gain u/s 112 and Casual Incomes u/s 115BB) or applicable on incomes of some specific bodies (like Minimum Alternate Tax u/s 115JB and Alternate Minimum Tax u/s 115JC). Also, rate for a resident and a non resident gets varied.

Double Taxation Avoidance Agreements (DTAA), a means of *Treaty Shopping*

India has executed double taxation avoidance agreements with many countries. Favorable tax treatment is available under these treaties. The lack of effective exchange of information is one of the key criteria in determining harmful tax practices under DTAA. Also, recent treaties of certain countries have contained an article intended to prevent *treaty shopping*, which is the inappropriate use of tax treaties by residents of third states. Present statute is not having any coping provisions against such *treaty shopping*.

There are many other provisions which are lingering in darkness of ambiguity; many more haunted by semantic and super technical interpretations and few diseased by redundancy. These await their omission or immediate alteration. The Code is going to be the most awaited statute to overcome the lacunae.

9. THE CODE 2013: HIGHLIGHTS AND TRIUMPH OVER

The Direct Tax Code seeks to consolidate and amend the law relating to the direct taxes, which consists of Income Tax, Dividend Distribution Tax, Fringe Benefit Tax and wealth Tax so as to enable to establish an economically efficient, effective and equitable direct tax system which will facilitate voluntary compliance and help increase in the tax Gross Domestic Product (GDP) ratio. To reduce the scope for dispute and minimize litigation is another object of having the Code.

Consolidated Statute: All the direct taxes have been brought under a single Code and compliance procedures unified. This will eventually pave the way for a single unified taxpayer reporting system.

Lucid Language: With the expansion of the economy, the number of taxpayers can be expected to increase significantly. Therefore, it is necessary to keep the cost of compliance low by facilitating voluntary compliance by them. This is sought to be achieved, inter alia, by using simple language in drafting so as to convey, with clarity, the intent, scope and amplitude of the provision of law. Each sub-section is a short sentence intended to convey only one point. All directions and mandates, to the extent possible, have been conveyed in active voice. Similarly, the provisos and explanations have been eliminated since they are incomprehensible to non-experts. The various conditions embedded in a provision have also been nested. More importantly, keeping in view the fact that a tax law is essentially a commercial law, extensive use of formulae and tables has been made.

Reducing Scope for Litigation: In order to avoid ambiguity in the provisions that has invariably given rise to rival interpretations, the Code overcomes even these limitations. The objective is that the tax administrator and the tax payer are ad-idem on the provisions of the law and the assessment results in finality to the tax liability of the tax payer. To further this objective, power has also been delegated to the Central Government/Board to avoid protracted litigation on procedural issues.

Flexibility: The structure of the Code has been developed in such a manner that it will cope up easily with the changes of a growing economy without making it to get amended every now and then. In this light exhaustive coverage and general principles have been incorporated. Therefore, to the extent possible, changes in economic scenario will not going to make the Statute to get overhauled frequently.

Rearrangement & Assembling of Provisions: Scattered provisions of same nature have been rearranged and consolidated in the present code. Tax Incentives like Tax Holidays, Exemptions, Deductions and Rebate & Reliefs are assembled to the extent.

Elimination of Regulatory Functions: Traditionally, the taxing statute has also been used as a regulatory tool. However, with regulatory authorities being established in various sectors of the economy, the regulatory function of the taxing statute has been withdrawn. This has significantly contributed to the simplification exercise.

Providing stability: At present, the rates of taxes are stipulated in the Finance Act of the relevant year. Therefore, there is a certain degree of uncertainty and instability in the prevailing rates of taxes. Under the Code, all rates of taxes are proposed to be prescribed in the First to the Fourth Schedule to the Code itself thereby obviating the need for an annual Finance Bill. The changes in the rates, if any, will be done through appropriate amendments to the Schedule brought before Parliament in the form of an Amendment Bill.

Raising the Wealth Tax Bar: To keep the base wide, Revised Code captures all assets for wealth-tax, thereby removing the distinction between physical and financial which discriminated against those taxpayers who are conservative and put their money in physical assets. Wealth-tax is proposed to be levied on individuals, HUFs and private discretionary trusts at the rate of 0.25%. The threshold for levy of wealth-tax in the case of individual and HUF shall be Rupees Fifty crores.

CONCLUSION

The Code is not an attempt to replace the prevailing Act with any prejudice rather it is an attempt and even an opportunity to revive the legislation. To make the new legislation free from all anomalies, misinterpretations, inclusive coverage and dispersed provisions it is the time to overhaul. The Code is not only meant to bring simplicity but it will also ensure certainty of duty payments. Removing all scope of tax evasion and even avoidance was one of the pivot points of the new legislation. Ambiguity which used to get settled at different legislative and governmental points is confined in the Code as much it could be. Delay in justice is justice denied the Code is coming up with a fast track settlement. Assessment & Procedures are made logical and free coercion. Tax incentives are compiled & consolidated so that benefits should get reasonably served. The alchemist, Direct Tax Code 2013 will be a Midas touch in the history of Indian Finance.

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